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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/980,758	02/19/2003	James M. Roberts	14538A-004510US	8779

20350 7590 09/25/2006

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EXAMINER
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COLLINS, CYNTHIA E

ART UNIT	PAPER NUMBER
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1638

DATE MAILED: 09/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/980,758

Applicant(s)

ROBERTS ET AL.

Examiner

Cynthia Collins

Art Unit

1638

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 23 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☐ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 1-14 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15 and 16 is/are allowed.
- 6) ☒ Claim(s) 19,20,23 and 24 is/are rejected.
- 7) ☒ Claim(s) 17,18,21 and 22 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

The Amendment filed June 23, 2006 has been entered.

Claims 1-14 are withdrawn.

Claims 15-16 are currently amended.

Claims 17-24 are new.

Claims 1-24 are pending.

Claims 15-24 are examined.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

All previous objections and rejections not set forth below have been withdrawn.

### ***Election/Restrictions***

This application contains claims 1-14 drawn to an invention nonelected with traverse in the reply filed on September 14, 2005. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

### ***Claim Objections***

Claim 17, and claims 18-24 dependent thereon, are objected to because claim 17 is directed in part to nonelected subject matter, i.e. the reverse complement of the nucleotide sequence of claim 15.

In the reply filed on September 14, 2005 Applicant elected with traverse of Group III, claims 15 and 16, drawn to a nucleotide sequence encoding a plant D-like protein. No grounds for traversal were stated. The nonelected subject matter (Claims 1-14, drawn to a polynucleotide targeting construct, a method for inactivating a D-like cyclin inhibitor via structurally disrupting the D-like cyclin inhibitor gene, an oligonucleotide and a method of antisense inhibition of the D-like cyclin inhibitor gene) was withdrawn from consideration as being directed to nonelected inventions in the office action mailed December 20, 2005.

Appropriate correction is required.

#### ***Information Disclosure Statement***

Applicant's request for consideration of item CT designated EMBL Accession No. Q9LJL5 on the IDS form 1449 filed September 2, 2003 is acknowledged. EMBL Accession No. Q9LJL5, Cyclin-dependent kinase inhibitor 6 from Arabidopsis thaliana (Name=ACK1; Synonyms=krp6), 01-OCT-2000, Nakamura Y. is cited on form 892, attached.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 20 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that

Art Unit: 1638

the inventor(s), at the time the application was filed, had possession of the claimed invention.

This is a new matter rejection. Claim 20 recites the limitation “the CaMV 35S or mannopine synthase hybrid promoter MAC” which limitation does not find support in the specification as filed, and thus constitutes new matter.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 19, and claim 23 dependent thereon, are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 19 is indefinite in the recitation of “capable of”. It is unclear whether functioning in a plant cell is in fact a required feature of the promoter.

Claim 20, and claim 24 dependent thereon, are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 20 is indefinite in the recitation of “wherein the promoter is CaMV 35S, tomato E8, patatin, ubiquitin, mannopine synthase, rice actin I, soybean seed protein glycinin (GlyI), soybean vegetative storage protein”. It is unclear how a promoter, which is a polynucleotide, could be CaMV 35S, tomato E8, patatin, ubiquitin, mannopine synthase, rice actin I, soybean seed protein glycinin (GlyI), soybean vegetative storage protein, which are polypeptides. It is suggested that the claim be amended to indicate that the promoters are obtained from the genes encoding the recited polypeptides, if such are intended to be encompassed by the claim.

***Allowable Subject Matter***

Claims 15 and 16 are allowed, due to the failure of the prior art to teach or suggest an isolated nucleotide sequence which encodes the plant D-like cyclin inhibitor protein designated BRO4 as depicted in SEQ ID NO: 8 initiating at amino acid residue position 13 and terminating at amino acid residue position 208, or the nucleotide sequence depicted in SEQ ID NO:7.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

***Remarks***

No claim is allowed.

Art Unit: 1638


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cynthia Collins whose telephone number is (571) 272-0794. The examiner can normally be reached on Monday-Friday 8:45 AM -5:15 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg can be reached on (571) 272-0975. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Cynthia Collins  
Primary Examiner  
Art Unit 1638

CC

  
9/18/06